

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

UNITED STATES COAST GUARD

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UNITED STATES COAST GUARD : DECISION OF THE
: VICE COMMANDANT
:
vs. :
:
: NO. 2534
MERCHANT MARINER'S LICENSE :
NO. 542230 :
Issued to: Alfred E. AILSWORTH :

This motion for a stay of the order of the Vice Commandant in Appeal Decision 2532
(AILSWORTH) has been taken pursuant to
46 C.F.R. §5.715.

BACKGROUND

Appellant's license was suspended by an Administrative Law Judge at Norfolk, Virginia by decisions dated 22 January 1990 and 8 February 1990 and an errata order dated 15 February 1990. Appellant was charged with negligence in failing to control the movement of his towing vessel, M/V MILDRED A. and tow, resulting in an allision with a pier. Appellant was also

charged with misconduct in failing to become familiar with his vessel's characteristics as required in 46 C.F.R. §15.405. Both charges were found proved and Appellant's license was suspended outright for twelve months.

Appellant requested issuance of a temporary license pending appeal to the Vice Commandant. This request was improperly denied by the Administrative Law Judge. By an order of 3 May 1990, the Vice Commandant vacated the Administrative Law Judge's denial, instructing that Appellant be issued a temporary license. See, Appeal Decision 2499 (AILSWORTH).

Appellant subsequently appealed the Administrative Law Judge's decision and order suspending his license outright for twelve months. Upon review, the Vice Commandant affirmed the decision and order of the Administrative Law Judge on 2 December 1991. See, Appeal Decision 2532 (AILSWORTH).

On 16 December 1991, Appellant served on the Vice Commandant a copy of a notice of appeal of Appeal Decision 2532 (AILSWORTH), filed with the National Transportation Safety Board (Board). Enclosed with that notice of appeal was a motion requesting a stay of the order affirming the suspension of Appellant's license.

OPINION

Appellant asserts that, pursuant to 46 C.F.R. §5.715, he is entitled to a stay of the Vice Commandant's order affirming the suspension. Appellant asserts that those charges found proved by the Administrative Law Judge do not create a situation that would make Appellant's service onboard a vessel incompatible with the requirements of safety at sea.

I do not concur. Appellant correctly states that the charges found proved are not those enumerated in 46 C.F.R. §5.61.

Charges enumerated under that regulation establish a rebuttable presumption that the Appellant's continued service onboard a vessel would not be compatible with the requirements of safety at sea. Notwithstanding the absence of the charge herein found proved in those charges enumerated in §5.61, 46 C.F.R. §5.715(a) gives the Vice-Commandant the discretion to determine that the Appellant's continued service is not compatible with the requirements of safety at sea and accordingly deny his petition for a stay.

Notwithstanding that a temporary license was granted to Appellant (Decision on Appeal 2499 (AILSWORTH)) pending Appellant's appeal from the order of suspension, a stay of the order of suspension is not appropriate.

At the time when the Vice Commandant ordered that a temporary license be issued, the full record was not available for review. The decision to grant the temporary license was based on a review of the charges and the decision and order of the Administrative Law Judge.

Regarding the petition for a stay, the full record, including the transcript of the hearing, was available for review. Upon close review of the record in this case, I find that Appellant's continued service pending appeal to the Board would not be compatible with safety at sea. I base this determination on the following factors.

The transcript (Appellant's own testimony) reflects that perhaps he did personally know of the existence of the overspeed trip, notwithstanding that he may have thought it became

operational at an RPM level other than 900 RPM. [TR 247]; see also, Decision of the Administrative Law Judge of 22 January 1990 at 14. However, even if Appellant had no personal knowledge of the overspeed trip, the record reflects that Appellant had sufficient opportunity to test the vessel's engine and determine the operating range and characteristics of the overspeed trip mechanism.

As the operator of the vessel, Appellant was required to know the operating characteristics of his vessel. Appeal Decisions 2302 (FRAPPIER); 2478 (DUPRE). It is reasonable to expect that Appellant, as a prudent operator, would have known of the overspeed trip mechanism through the exercise of a reasonably diligent inspection. Appeal Decisions 2367 (SPENCER); 2308 (GRAY).

Appellant's conduct in this matter connotes an indifferent or careless attitude. The record reflects that due to Appellant's negligence and misconduct, several moored vessels and piers were destroyed or damaged. The record also reflects that Appellant's license has previously been suspended for four months in 1982 based on the finding of proved of six specifications to the charge of misconduct.

CONCLUSION

Appellant's continued service as a licensed vessel operator during the pendency of his appeal to the Board would not be compatible with safety at sea.

ORDER

Appellant petition for a stay of the order of suspension pending his appeal to the Board is
DENIED.

//S// MARTIN H. DANIELL
MARTIN H. DANIELL
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 5th day
of February, 1992.